



Hot issues

Our take on the telco specific competition law reforms

This week a [Federal Parliamentary Committee](#) is expected to report on a draft bill to amend the *Competition and Consumer Act* telco specific provisions. In this blog we will outline our assessment of the impact on consumers. This is the approach we took in our response to the Department of Communications and the Arts consultation on the proposed changes in October 2016.

Not surprisingly, Telstra is generally supportive of the removal of the telco specific rules. However, other telecommunications industry providers are taking a different approach as they believe the removal of the specific rules would [weaken competition in the telco sector](#).

Competition law is critical so that companies can offer a high quality of service at the lowest possible price. There are currently two sets of laws that cover competition in the telecommunications industry – one set is general, and the other telco industry specific. The Federal Government is proposing to remove some of the telco specific rules while at the same time adopting some of the reforms proposed by the Harper Review in 2014 – the ‘effects test.’ The reason given by the Government for removing some of the telco rules is that they will be partly duplicated, and that some of those rules are no longer needed because the telecommunications market has changed.

ACCAN supports removing any overlap and duplication as long as this does not cause any detriment to consumers, but we have concerns about the impact of the following changes to the telco specific rules.

Removal of competition notices

Competition notices allow the ACCC to issue a ‘stop’ notice to a provider who is suspected of acting anti-competitively. There are hefty fines if a provider does not comply – \$10m, plus \$1m per day for going against a notice. Competition notices are good from a consumer protection perspective as they are quick to activate.

ACCAN supports keeping competition notices. We consider that they are likely to have a deterrent effect on potentially anti-competitive behaviour. We formed our view based on Telstra’s current significant market influence and position, future concerns around nbn’s market position as a monopoly wholesale network, as well as consultations with consumers and experts.

Removal of ‘social utility factors’

Under the telco specific laws, the ACCC can consider authorising otherwise anti-competitive behaviour in the telecommunications market, if the anti-competitive behaviour delivers socially useful programs. Currently, ‘social utility factors’ that can include:

- Providing the Universal Service Obligation or similar
- Providing services on favourable terms to those who are financially disadvantaged, people disadvantaged on “health grounds” – this could include persons with disabilities, as well as services to charities, schools, community organisations and non-profits

As the social utility factors can include providing services to vulnerable consumers who may not otherwise have access, ACCAN strongly supports retaining the power of the ACCC to make this exemption in the telco space.

Removal of the definition of ‘telecommunications market’

We support keeping the definition of the telecommunications market, because it provides a clear understanding about the range of services that are covered by the law. For example, the existing definition includes ‘content services,’ which are now a major focus and differentiator for telcos. We also recommend that the ACCC establish guidelines about specific emerging trends and issues that may risk being uncompetitive in telecommunications markets.

Removal of reference to predatory pricing

Predatory pricing occurs when a dominant company drives down prices in the market by selling goods at less than the cost price to itself for a long period. The Government proposal is to remove the specific reference to this type of behaviour as something a court may consider when deciding if a telco has acted anti-competitively. ACCAN has concerns about this change, and recommends that if it goes ahead, the ACCC should develop guidelines which point out that predatory pricing is likely to breach the new law.

You can read ACCAN’s position in more detail in [our submission](#) to the Department of Communications and the Arts consultation.

What next?

We will be waiting to hear what the Senate Committee has to say this week and then continuing our discussions with industry and Government on the proposed reforms.